

August 14, 2008

**OFFICE OF THE HEARING EXAMINER  
CITY OF RENTON**

**Conclusion and Recommendation**

APPLICANT: Greg Fawcett  
The Rob-Clarissa Fawcett Partnership  
PO Box 402  
Fall City, WA 98024

OWNER: The Rob-Clarissa Fawcett Partnership  
And Clarissa Fawcett  
PO Box 402  
Fall City, WA 98024

CONTACT: Jim Hanson  
Hanson Consulting  
17446 Mallard Cove Lane  
Mt. Vernon, WA 98274

Lake Washington View Estates Preliminary Plat  
File No.: LUA 08-057, PP, SM

LOCATION: 4200 Block of Lake Washington Blvd N

SUMMARY OF REQUEST: Requesting Preliminary Plat approval and Shoreline Substantial Development Permit for subdivision of a 5.53 acre parcel into 13 lots and one open space tract for the future construction of single-family residences.

SUMMARY OF ACTION: Development Services Recommendation: Approve subject to conditions.

DEVELOPMENT SERVICES REPORT: The Development Services Report was received by the Examiner on July 29, 2008.

PUBLIC HEARING: After reviewing the Development Services Report, examining available information on file with the application, field checking the property and surrounding area; the Examiner conducted a public hearing on the subject as follows:

**MINUTES**

***The following minutes are a summary of the August 5, 2008 hearing.  
The legal record is recorded on CD.***

The hearing opened on Tuesday, August 5, 2008, at 9:02 a.m. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

The following exhibits were entered into the record:

<b><u>Exhibit No. 1:</u></b> Yellow file containing the original application, proof of posting, proof of publication and other documentation pertinent to this request.	<b><u>Exhibit No. 2:</u></b> Neighborhood Detail Map
<b><u>Exhibit No. 3:</u></b> Overall Preliminary Plat Plan	<b><u>Exhibit No. 4:</u></b> Preliminary Plat Plan Lots 1-12
<b><u>Exhibit No. 5:</u></b> Preliminary Plat Plan Lot 13	<b><u>Exhibit No. 6:</u></b> Landscape Plan
<b><u>Exhibit No. 7:</u></b> Preliminary Drainage Plan	<b><u>Exhibit No. 8:</u></b> Zoning Map
<b><u>Exhibit No. 9:</u></b> ERC Mitigation Measures	<b><u>Exhibit No. 10:</u></b> ERC Advisory Note
<b><u>Exhibit No. 11:</u></b> Full size map of 100 year flood plain along the Cedar River	

The hearing opened with a presentation of the staff report by Gerald Wasser, Associate Planner, Community and Economic Development Department, City of Renton, 1055 S Grady Way, Renton, Washington 98055. The property is located east of Lake Washington Blvd, north of N 40<sup>th</sup> Street and south of N 44<sup>th</sup> Street in the R-8 zone.

The proposed lots would range in size from 5,159 square feet to 15,174 square feet, resulting in a net density of 3.95 du/ac. A wetland report, stream study and geotechnical report were submitted with the project application. The wetland report identified 3 wetlands, 2 Category 3 wetlands and one Category 2 wetland. May Creek is located on the northern boundary of the site and is a Class 1 stream. There is an unnamed Class 4 stream that connects the two wetlands on Tract A. The geotechnical report identified two protected slope areas on the eastern portion of the site. All critical areas on site would be located within Tract A.

Environmental Review Committee issued a Determination of Non-Significance – Mitigated with 10 mitigation measures. No appeals were filed. This Determination was issued for a previous project of the same name with project number LUA 07-039. The new project today is with a change of Applicant and a redesign of the project.

The proposed plat is consistent with the Residential Single Family Land Use and Community Design Elements of the Comprehensive Plan. The proposed plan further would allow for the future construction of up to 13 new single-family residential units.

After the deduction of public rights-of-way, private access easements and critical areas from the gross acreage, the 13-lot subdivision would result in a net density of 3.95 dwelling units per acre.

As proposed all lots appear to be in compliance with the required lot width, depth and size standards for the R-8 zone. All setback standards and building standards will be verified prior to the issuance of individual building permits. A conceptual landscape plan was submitted and appears to comply with the City's landscaping regulations.

Each lot would have access to a public right-of-way, Lots 1-12 would access directly off Road A and Lot 13 would access off N 40<sup>th</sup> Street. All lots appear to comply with arrangement and access requirements of the Subdivision Regulations. The proposed lots further appear to have sufficient building area for the development of detached single-family homes.

A revised preliminary plat map along with the Utility Construction Permit Application was requested showing a 35-foot curb return radius along Lake Washington Blvd N. Access to Lots 1-12 would be provided via a new internal 42-foot wide public street (Road A). Lot 13 access would be provided via a pipestem off N 40<sup>th</sup> Street. Full street improvements, including paving, sidewalks, curb and gutter, storm drains, landscaping, street lighting and signage would be required along the frontages of Lake Washington Blvd N and the new internal street (Road A).

Traffic, Fire and Park Mitigation Fees were imposed by the Environmental Review Committee.

The site slopes down to the north at an average grade of 13 percent. A slope with a grade in excess of 40 percent is located on the east portion of the project site and meets the City's criteria for classification as a Protected Slope. No development is proposed on the Protected Slope area.

In order to further protect May Creek the City's ERC imposed a wider buffer of 50 feet on May Creek rather than the 25-foot buffer mandated by the City's current shoreline regulations. The project will be subject to the 2005 Department of Ecology Manual regarding erosion control.

To ensure that none of the trees proposed to be retained are damaged during construction, it was recommended that those trees would be shown on each of the plans submitted as part of the Utility Construction Permit Application. To protect the protected slopes, wetlands, streams, and associated buffer areas from impacts related to the construction of new single-family residences, it was recommended that the plat map be revised to include the protected slopes, wetlands, streams, and their associated buffer areas within a Native Growth Protection Easement prior to or concurrent with the recording of the final plat. In addition, the applicant proposes 30 new street trees as part of the project landscape plan as well as additional trees in the Wetlands Buffer Enhancement Plan.

The Renton School District has stated that they can accommodate the approximate 6 additional students generated by this proposal.

A Technical Information Report was previously submitted, a Level One Analysis was submitted with the current application. The existing drainage currently discharges to May Creek. The proposed drainage control would be by two detention vaults. The project site contains a portion of the May Creek 100-year flood plain, it was recommended that drainage and surface water design modeling be conducted. Further discussion was had regarding the flood plain and the effects it could have on a development of this type and size.

The site is within the City of Renton water and sewer service area. There is an existing 12-inch water main within Lake Washington Blvd and Meadow Ave NE. Water main improvements for this development would entail improvements to provide the minimum fire flow and would include a water main extension along the frontage of the project on Lake Washington Blvd to the north property line, a water main extension of an 8-inch minimum within the new street, and fire hydrants, domestic and landscape water meters would be required.

There is an 8-inch sewer main adjacent and available to serve the site. There is also a King County Metro line in Lake Washington Blvd. This development would be required to extend the sanitary sewer along the frontage of the site, however the plat can also be served by a connection to the Metro Sewer line.

Subsequent to transmittal of the Preliminary Report, the Director of Parks has requested in addition to the Parks Mitigation Fees, they would like an easement for trail purposes on the north side of May Creek for continuous trail connection from Lake Washington to Cougar Mountain.

Jim Hanson, Hanson Consulting, 17446 Mallard Cove Lane, Mt. Vernon, WA 98274 stated that they agree with the staff report with the exception of the 100 year flood study. FEMA regulates flood elevations and it is a requirement that the adopted 100-year flood map be adopted and followed. FEMA is in the process of redoing some of the their maps in this locality, however, May Creek is not one of the streams that they are actively looking at changing at this time. It is very clear on the FEMA map where the 100-year flood plain is located and it is shown on their plat map.

The Examiner questioned Mr. Wasser as to what the impetus was with regard to imposing this condition.

Kayren Kittrick, Development Services stated that it appeared that it was inadvertently from the previous comments as opposed to what was specifically commented on for this project. The only point where there might be a constriction would be at the point where May Creek crosses Lake Washington Blvd and everything has been improved in this area. This appears to be an old comment, it does not show up in her plan review's comments.

Darrell Offe, Offe Engineers, 13932 SE 159<sup>th</sup> Place, Renton, WA 98058 stated that he is familiar with the questions being asked. The Level One analysis provided to the City (May 30, 2008) Section 4 does state sizing for the detention vaults and on the Drainage Control Plan there is sizing also shown for the two vaults.

The actual FEMA map, which includes cross sections marked on it (was included in his report to the City) under Appendix 3b, shows the elevations and flood zones as it affects the property. At cross section E the elevation is 29 and upstream from that is a cross section with an elevation of 30, going further to the east side of the property the elevation becomes 34. At the bridge there is a cross section elevation of approximately 26. Moving from the westerly portion of the property to the east within May Creek, the elevation is changing in that flood plain. The elevation of Lots 8-11 is currently 28 and the cross section of the flood plain in that area is 28/29.

The complaints that have been stated in the report are coming from a basin report that is approximately 20 years old. Those constraints that are downstream at the Barbee Mill and at the mouth of the creek have gone away with the activity that has occurred down there. The dredging has reduced the silt build up in the creek and the restrictions that are in the basin plan no longer exist.

The Examiner inquired as to the cost of having this analysis done. It may not be an issue, but in 10 years or so it just may flood and become an issue that should have been handled now and not left alone. If the analysis were to be done, how long would it take to complete?

Mr. Hanson stated that the previous applicant did get one proposal to do this study and it was a little over \$25,000.00. The only other issue he had was the trail. The north side of May Creek is not part of this parcel, and not part of the application.

Mr. Offe stated he was not certain of the time, it is not an easy task, but he can't imagine that it would be too long to do. However, the City is required to go by the FEMA adopted map. The applicant in building houses must go by the FEMA adopted map. If they were to do a study and find that the flood elevation is lower, FEMA would not accept it.

Kayren Kittrick stated that she was not aware of the trail issue, there was nothing in her report about it. The 2005 preliminary report was fine. There were some calculations for the vaults, the question always arises if anything would change in the final design. An updated TIR is always required as part of the Utility permit.

Mr. Hanson stated that they have had conversations with Dave Christianson, the City's Sewer Utility and Metro. Metro at the time of those discussions had no objection to using their facility, but the actual application or

request had to come from the City of Renton, at the time of the construction permit, the City of Renton would be the one to make the application to Metro.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 10:06 a.m.

### **FINDINGS, CONCLUSIONS & RECOMMENDATION**

Having reviewed the record in this matter, the Examiner now makes and enters the following:

#### **FINDINGS:**

1. The applicant, Greg Fawcett, The Rob-Clarissa Fawcett Partnership, represented by Jim Hanson, filed a request for a Preliminary Plat.
2. The yellow file containing the staff report, the State Environmental Policy Act (SEPA) documentation and other pertinent materials was entered into the record as Exhibit #1.
3. The Environmental Review Committee (ERC), the City's responsible official issued a Determination of Non-Significance - Mitigated (DNS-M).
4. The subject proposal was reviewed by all departments with an interest in the matter.
5. The subject site is located in the 4200 block of Lake Washington Boulevard North. The subject site is located on the east side of the boulevard north of N 40th Street. May Creek generally forms the northern boundary of the subject site.
6. The map element of the Comprehensive Plan designates the area in which the subject site is located as suitable for the development of detached single-family homes, but does not mandate such development without consideration of other policies of the Plan.
7. The subject site is currently zoned R-8 (Single Family - 8 dwelling units/acre). The R-8 zone requires density to be in the range of 4 to 6 dwelling units per acre.
8. The subject site was annexed to the City with the adoption of Ordinance 2341 enacted in July 1967.
9. The subject site is approximately 5.5 acres or 241,053 square feet. The subject site is a very irregularly shaped parcel approximately 220 feet wide by 900 feet long.
10. The subject site contains a variety of critical areas including steep, protected slopes, one Category 2 wetland, two Category 3 wetlands, a Class 4 creek and the south shoreline of May Creek as well as the creek. May Creek is a "shoreline of the state" and brings the proposed plat under the Shorelines Management Act. The proposal requires a Substantial Development Permit.
11. Wetland 1, a 6,093 square foot wetland, is a Category 3. Wetland 2, a 3,831 square foot wetland, is also a Category 3. Wetland 3 is a Category 2 wetland and is 23,756 square feet. Wetlands 2 and 3 are connected by the Class 4 creek. Two protected slopes were identified on the eastern portion of the site. The applicant has proposed creating a separate tract, Tract A, to contain all of the critical areas including their required buffers. In addition, the ERC required setbacks from the top of the critical slopes unless geotechnically appropriate and an increase in the protective May Creek buffer to 50 feet.

12. A tree survey indicates that seven (7) trees would need to be retained or replaced under City regulations.
13. The applicant proposes dividing the subject site into 13 lots along with the tract containing the various critical areas. Twelve of the lots, Proposed Lots 1 to 12, would be on the western portion of the subject site with access from Lake Washington Boulevard. Proposed Lot 13 would be located on the far or east side of the critical areas tract and it would be accessed via an existing pipestem to Meadow Avenue North at its intersection with North 40th Street.
14. The main portion of the plat, Proposed Lots 1 to 12, generally would be aligned north and south of a new west to east roadway off of Lake Washington Boulevard. Proposed Lots 1 to 6 would be aligned on the south side of the road while Proposed Lots 8 to 12 would be aligned on the north side of the roadway. Proposed Lot 7 would be located at the end of the road. A modified hammerhead or cul-de-sac would accommodate turning maneuvers in a half bulb in the vicinity of Proposed Lots 8, 9 and 10. The roadway would be a deadend since the critical areas east of Proposed Lot 7 would prevent any extension of the roadway further to the east.
15. As noted Proposed Lot 13 would be separated from the rest of the plat by the critical areas. The lot's proposed pipestem access will exceed City standards because it exceeds 150 feet in length but staff noted that this excessive length is an existing condition and access is already permitted via this pipestem.
16. Staff noted that the proposed curb radius of the new street with Lake Washington Boulevard is proposed at 25 feet and code requires 35 feet. The vertical curve for the roadway profile is proposed at 50 feet and code requires it to be 100 feet. Staff noted that the constraints on the shape of the parcel and the limitations imposed by the critical areas makes alley access infeasible.
17. The density for the plat would be 3.95 dwelling units per acre after subtracting sensitive areas (wetlands and protected slopes: 83,838 square feet) and roadways (13,543 square feet). The proposed subdivision results in a plat that does not meet the minimum density required in the R-8 Zone. Code permits a density below standards when a property is constrained by critical areas (RMC 4-4-110D.1.b). The fact that the entire center of the subject site is encumbered by streams, wetlands and protected slopes justifies approving a plat with less than the normally required density.
18. The subject site is located within the Renton School District. The project is expected to generate approximately 5 or 6 school age children. These students would be spread across the grades and would be assigned on a space available basis.
19. The development will increase traffic approximately 10 trips per unit or approximately 130 trips for the 13 single-family homes. Approximately ten percent of the trips, or approximately 13 additional peak hour trips will be generated in the morning and evening.
20. Stormwater now drains to May Creek. That flow will be maintained but controlled by two detention vaults. Staff noted that size calculations were not provided but indicated that there is sufficient room to provide appropriately sized vaults.
21. Water lines are available in both Lake Washington Boulevard west of the site and Meadow Avenue North, east of the subject site. The Lake Washington line would have to be extended along the property line to the north. The City might want the line oversized and would share the costs of a line larger than

required.

22. An 8-inch sewer main is adjacent to the subject site. There is also a major King County Metro line in Lake Washington Blvd. The King County line may be used but the applicant would need special permission to use that line.
23. As noted, May Creek runs along the north boundary of the subject site. The creek's 100-year floodplain is located along or near that boundary. Staff noted the following:

“Due to staff concerns regarding the impacts flooding could have on the proposed development, staff recommends as a condition of approval that drainage and surface water design modeling be conducted. The modeling shall include a determination of the future conditions to determine the maximum 100-year flood surface water elevation. Hydrologic modeling using the Hydrologic Engineering Centers River Analysis System (HEC- RAS) software will be required as part of the Utility Construction Permit submittal. The future condition flow should utilize the May Creek Basin Plan 100-year model flow of 1059 CFS.”

At the hearing staff suggested the condition had been attached to the prior proposal for this site and it might not be appropriate at this time. No representative from Surface Water was available to make further comment.

#### **CONCLUSION:**

1. The proposed plat appears to serve the public use and interest. A major factor in this plat is the extensive area in the center of the property dominated by critical areas including protected slopes, three wetlands and two creeks. The acreage constrained by these critical areas also reduces the overall acreage that may be divided to create lots suitable for R-8, single-family homes.
2. The fact that the entire center of the subject site is encumbered by streams, wetlands and protected slopes justifies approving a plat with less than the normally required density (RMC 4-4-110D.1.b). While the Zoning Code provides a minimum density of four homes per acre in the R-8 District, when critical areas reduce the overall developable area, density may be reduced. In this case the site can provide a reasonable development pattern when achieving a density of 3.95 dwelling units per acre.
3. The applicant will be segregating out those critical areas and they will be placed in a Native Growth Protection Easement to assure that they are undisturbed. This area will contain not only the critical areas themselves but also the buffers that protect those features.
4. The property lies along May Creek and proposed Lots 7 to 12 are located along the south shore of the creek. While there appears to be some question about the appropriateness of the condition requiring a delineation of the 100-year flood zone quoted in Finding 23 above, it appears that a review of this property when development was first proposed found that there might be some ambiguity about where the 100-year flood plain intersects the proposed lots of the south side of the Creek as well as actual or current conditions for this site. A condition to study the 100-year flood level to assure lives and property would not be jeopardized if flooding events were to occur on this property is reasonable. The City is bound by minimum FEMA flood standards. But it may impose greater safeguards using its appropriate discretion to ascertain current conditions at the location of a proposed development within its jurisdiction. Flood conditions can change due to erosion, sedimentation, deposition of woody debris and other seasonal or longer-term events. At this point in the review, it appears that the condition is

reasonable and should be required. All development that occurs on the site shall abide by appropriate safety standards depending on flood plain analysis.

5. The plat appears to provide an offset to the impacts its development will create. The ERC imposed fees to help pay for additional transportation improvements, emergency services and recreational needs.
6. The development of the plat will also increase the tax base of the City, which should offset additional impacts of providing a range of urban services to the new residents.
7. The impacts of developing this parcel on traffic and the neighborhood character were considered when the zoning and comprehensive plan policies were adopted for this area. Clearly, the site has its sensitive elements and development will affect the character of the May Creek corridor.
8. As noted, the applicant will have to comply with the various technical standards for roads, stormwater detention and sewer and water lines. The applicant will also have to comply with the City's landscaping and tree retention regulations.
9. In conclusion, it appears that with the conditions proposed below, this plat containing very sensitive critical areas and flood plain encumbered property, can be reasonably developed.

**RECOMMENDATION:**

The City Council should approve the proposed 13-lot plat subject to the following conditions:

1. The applicant shall comply with all requirements of the Determination of Non-Significance – Mitigated that was issued by the Environmental Review Committee on October 22, 2007 for Project File No. LUA-07-039, PP, ECF, SM.
2. A revised preliminary plat map shall be submitted with the Utility Construction Permit Application showing a 35-foot curb return radius with Lake Washington Blvd N.
3. A native Growth Protection Easement (NGPE) shall be recorded over the protected slopes, wetlands, streams, and their associated buffer areas prior to or concurrent with the recording of the final plat map.
4. The edge of the NGPE shall be delineated with a split rail fence and identified with signage as approved by the Development Services Division Project Manager. A fencing and signage detail shall be submitted to the Development Services Division Project Manager at the time of Utility Construction Permit Application for review and approval. The fencing and signage shall be installed prior to the recording of the final plat.
5. The trees proposed to be retained throughout the project shall be shown on each of the plan sheets submitted as a part of the Utility Construction Permit Application and protection measures for the trees to ensure survival during construction of the project shall be submitted for review and approval by the Development Services Division Project Manager prior to the issuance of a Utility Construction Permit.
6. Sizing calculations for the detention and water quality facilities (detention vaults) in accordance with the 2005 Surface Water Design Manual shall be provided at the time of Utility Construction Permit application.
7. Drainage and surface water design modeling shall include a determination of the future conditions to



determine the maximum 100-year flood surface water elevation. Hydrologic modeling using the Hydrologic Engineering Centers River Analysis System (HEC-RAS) software will be required as part of the Utility Construction Permit submittal. The future condition flow should utilize the May Creek Basin Plan 100-year model flow of 1059 CFS.

8. All development that occurs on the site shall abide by appropriate safety standards depending on flood plain analysis.

ORDERED THIS 14<sup>th</sup> day of August 2008.

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FRED J. KAUFMAN  
HEARING EXAMINER

TRANSMITTED THIS 14<sup>th</sup> day of August 2008 to the following:

Mayor Denis Law	Dave Pargas, Fire
Jay Covington, Chief Administrative Officer	Larry Meckling, Building Official
Julia Medzegan, Council Liaison	Planning Commission
Gregg Zimmerman, PBPW Administrator	Transportation Division
Alex Pietsch, Economic Development	Utilities Division
Jennifer Henning, Development Services	Neil Watts, Development Services
Stacy Tucker, Development Services	Janet Conklin, Development Services
Marty Wine, Assistant CAO	Renton Reporter

Pursuant to Title IV, Chapter 8, Section 100 of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., August 28, 2008.** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$75.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., August 28, 2008.**

**If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.**

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.